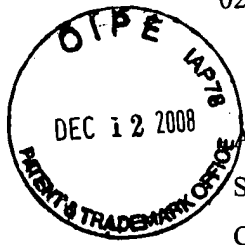


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph Z. Wascow
 Serial No.: 10/613,717
 Conf. No.: 4989
 Filed: 7/3/2003
 For: CIRCULAR SAW HAVING BEVEL AND
 DEPTH OF CUT DETENT
 Art Unit: 3724
 Examiner: Choi, Stephen

I hereby certify that this paper is being deposited with the United States Postal Service as FIRST-CLASS mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

12/9/2008

Date

Registration No. 26,174

Appr. February 20, 1998 Attorney for
 Applicant(s)

TRANSMITTAL OF APPEAL BRIEF

MS Appeal Brief-Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on October 14, 2008.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$540.00

(complete (a) or (b) as applicable)

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

Extension fee for response within first month:

() By a small entity (1.9(f)) \$ 65.00
 () By other than a small entity \$ 130.00

Extension fee for response within second month:

() By a small entity (1.9(f)) \$ 245.00
 () By other than a small entity \$ 490.00

Extension fee for response within third month:

() By a small entity (1.9(f)) \$ 555.00
 () By other than a small entity \$ 1110.00

Extension fee for response within fourth month:

() By a small entity (1.9(f)) \$ 865.00
 () By other than a small entity \$ 1730.00

12/12/2008 NNGUYEN1 00000028 10613717

() The extension fee has already been filed in this application.

540.00 DP


() A check in the amount of \$ _____ for the extension of time fee is enclosed.

() (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

(X) A check in the amount of \$ 540.00 is enclosed for filing the Appeal Brief.

(X) The Commissioner is hereby authorized to charge any additional fee which may be required, or credit any overpayment to Deposit Account No. 07-2069. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 07-2069. (One additional copy of this Notice is enclosed herewith.)

Dated: December 9, 2008


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0212.66426

PATENT APPLICATION

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Applicant: Joseph Z. Wascow
Serial No.: 10/613,717
Conf. No.: 4989
Filed: 7/3/2003
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Examiner: Choi, Stephen

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December 9, 2008

Date

[Signature]
Attorney for Applicant(s)
Registration No. 26,174

APPELLANT'S BRIEF ON APPEAL PURSUANT TO 37 CFR § 41.37

This Appeal Brief is in support of Applicant's Notice of Appeal dated
October 14, 2008.

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REAL PARTY IN INTEREST

Credo Technology Corporation, which is owned by Robert Bosch LLC.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims that are pending, finally rejected and appealed are 32-35 and 37-42.

Claims 12-21 and 36 have been allowed.

STATUS OF AMENDMENTS AFTER FINAL

No amendments were filed after the final office action dated June 12, 2008.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention generally concerns a power portable circular saw that has bevel and depth of cut adjustment capabilities.

Independent claims 32 and 42 are annotated to the specification (Pg/line) as set forth below. FIGS 1-4 relate to depth adjustment and FIGS 5-8 relate to bevel adjustment.

32. A circular saw (10) comprising:
a housing (16, Pg 5/1-10);
a motor (14) disposed within said housing and configured for rotating a circular saw blade (12) rotatably driven by said motor (Pg 5/1-10);
a foot (18) having a generally flat bottom surface (Pg 5/1-10; Pg 5/21-22);
and

a saw blade adjustment detent mechanism (26, 64) pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable to said foot through a range of saw blade positions relative to said foot (Pg 5/19 - 6/13), said saw blade adjustment detent mechanism including a detent holding assembly (26, 64) carrying a pivotable saw blade adjustment detent (32, Pg 5/23-6/13; 68, Pg 8/3-22) with a pivot axis on one end portion, a transverse ridge (60, Pg 6/1-9; 76, Pg 8/11-28, Fig 7) spaced from said pivot axis and a spring (34, Pg 6/1-13; 94, Pg 9/7-10) for biasing said detent into engagement with one of a plurality of spaced position recesses (56, 72), and an arcuate member (28, Pg 5/19-6/13; 74, Pg 8/11-28) defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said saw blade adjustment detent to provide predetermined position settings (Pg/1-4; Pg 8/26-28) within said range of positions, said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a

releasing force to said foot without initiating any other action (Pg 5/25-29, Pg 8/11-22).

42. A circular saw (10) comprising:

a housing (16, Pg 5/1-10);

a motor (14) disposed within said housing and configured for rotating a circular saw blade (12) rotatably driven by said motor (Pg 5/1-10);

a foot (18) movably attached to said housing and having a generally flat bottom surface (Pg 5/1-10; Pg 5/21-22); and

an adjustment detent mechanism (26, 64) pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable relative to said foot through a range of positions (Pg 5/19 - 6/13), said adjustment detent mechanism including a detent holding assembly (26, 64) carrying a pivotable adjustment detent (32, Pg 5/23-6/13; 68, Pg 8/3-22) with a pivot axis on one end portion, a transverse ridge (60, Pg 6/1-9; 76, Pg 8/11-28, Fig 7) spaced from said pivot axis and a spring (34, Pg 6/1-13; 94, Pg 9/7-10) for biasing said detent into engagement with one of a plurality of spaced position recesses, and an arcuate member (28, Pg 5/19-6/13; 74, Pg 8/11-28) secured to said foot and defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said adjustment detent to provide predetermined position settings (Pg 1-4; Pg 8/26-28) within said range of positions, said detent being disengaged from one of said position recesses as a direct result of a user applying a releasing force to said foot which moves said foot without any other action (Pg 5/25-29, Pg 8/11-22).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 32-35 were rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. 4,011,782 (hereinafter “Clark”).

Claims 32, 37-38 and 42 were rejected under 35 U.S.C. 102(b) as being anticipated by JP 59167202 (hereinafter, the “’202” reference).

Claims 39-41 were rejected under 35 U.S.C. 103(a) as being unpatentable over ‘202 in view of Lewin et al.

Appellant hereby requests review of these rejections in the present appeal.

ARGUMENT

The examiner has rejected independent claim 32 under 35 U.S.C. 102(b) as being anticipated by Clark, and claims 32 and 42 as being anticipated by the Japanese '202 patent. It is believed that these rejections are improper and do not comply with the law of anticipation. The law of anticipation has been developed principally by the Court of Appeals for the Federal Circuit and is briefly set forth as follows:

An invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claims in question. *Scripps Clinic and Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983). **The identical invention must be shown by the prior art reference in as much detail as is contained in the patent claim.** *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1267 (Fed. Cir. 1991); *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780 (Fed. Cir. 1985). M.P.E.P. § 2131 also states that “[t]he identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

The Court of Appeals for the Federal Circuit has also recently decided a case which requires an additional standard for finding anticipation. In

the case of *Net MoneyIN, Inc. v. VeriSign, Inc.*, __ F.3d __ (Fed. Cir. 2008)(Linn, J.), distinguishing *Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339, 1348 (Fed.Cir.2004), the Court held that the test for anticipation by a single reference under 35 USC § 102 requires that a single reference not only disclose all elements of the invention, but that the elements be “arranged or combined in the same way as in the claim”. The Court explains:

“‘[A]rranged as in the claim’ is readily understood in relation to claims drawn to things such as ingredients mixed in some claimed order. In such instances, a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate, because the reference would be missing any disclosure of the limitations of the claimed invention ‘arranged as in the claim.’ But the ‘arranged as in the claim’ requirement is not limited to such a narrow set of “order of limitations” claims. **Rather, our precedent informs that the ‘arranged as in the claim’ requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order. The test is thus more accurately understood to mean ‘arranged or combined in the same way as in the claim.’”**

As will be demonstrated, the examiner is believed to have improperly rejected the claims on appeal here.

Clark does not anticipate claims 32-35

Applying the law of anticipation to claim 32, it is clear that these rejections are improper. Claim 32 reads as follows with emphasis added:

32. A circular saw comprising:
a housing;
a motor disposed within said housing and configured for rotating a circular saw blade rotatably driven by said motor;
a foot having a generally flat bottom surface; and
a saw blade adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable to said foot through a range of saw blade positions relative to said foot, said saw blade adjustment detent mechanism including a detent holding assembly carrying a pivotable saw blade adjustment detent with a pivot axis on one end portion, a transverse ridge spaced from said pivot axis and a spring for biasing said detent into engagement with one of a plurality of spaced position recesses, and an arcuate member defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said saw blade adjustment detent to provide predetermined position settings within said range of positions, *said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action.*

Clark fails to anticipate, teach or suggest the language “said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action.” With regard to the rejection based upon Clark, the examiner states that “Clark teaches a device including a foot (e.g., 22) capable being moved responsive to a user applying a releasing force to the foot to release the foot from a position on a supporting surface to another position on the supporting surface without initiating any other action while the detent being disengaged from one of

the position recesses.” The examiner also states that “claim 32 does not preclude other releasing force other than a force to release the detent from one of the position recesses”. Both of these quotes are believed to ignore the actual language of the claim.

With regard to the first statement by the examiner “Clark teaches a device including a foot (e.g., 22) capable being moved responsive to a user applying a releasing force to the foot to release the foot from a position on a supporting surface to another position on the supporting surface while the detent (sic) being disengaged from one of said position recesses” is also contrary to the common sense meaning of the claim. The claim language clearly indicates that the detent is disengaged from one of the position recesses *when* the foot is moved responsive to a user applying a releasing force to said foot without initiating any other action. It is a cause and effect circumstance and is believed to be clearly stated. The claim clearly states that it has the *capability* of being disengaged responsive to the applying a releasing force to said foot without initiating any other action and clearly the Clark reference does not have this capability and therefore fails to meet the claim.

It is believed that the movement of the Clark foot (i.e., the leg portions 22) is effectively moving the whole saw on the supporting surface (such as a table), is contrary to common sense and is an illogical application of Clark to the claim. Clearly, moving the entire saw around on a surface has nothing to do

with disengaging a detent from one of the position recesses and such movement would *not* disengage a detent without some other action being initiated.

In the examiner's answer, he states that "the claim [32] merely calls for conditional circumstance (i.e., the detent is in disengaged state when the foot is moved in responsive to a user applying a releasing force)." This characterization, to the extent is understood, also ignores the language of the claim, which is *said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action*. As is required by the above cited *Net MoneyIN* case, **an anticipatory reference must show all of the limitations of the claims arranged or combined in the same way**. Clark simply does not.

The '202 reference does not anticipate Claims 32, 37-38 and 42

The '202 reference also fails to anticipate, teach or suggest the language "said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action."

The examiner states that it does

"teach a device of capable disengaging the detent from one of the position recesses when the foot is moved responsive to a user applying a releasing force to the foot without initiating any other action as a direct result of a user applying a releasing force to the foot without initiating any other action. For example, *a user can*

apply a force to move the foot from a position shown on Figure 4 to left direction while the detent (e.g., 11) being stationary. Such an action will release the detent from the position shown on Figure 5 to a position shown on Figure 6.” (emphasis added)

This rejection is also believed to be flawed as common sense dictates that the condition where the detent is “being stationary” while the foot is moved is in fact **other action**. For the foot to move to disengage the detent from one of the position recesses, it is necessary to depress the detent 11 inwardly and that cannot be done without a **separate force** being applied relative to the saw itself so that the detent will move inwardly to release the detent mechanism. Again, the examiner uses a contrived analysis in an attempt to meet the claim and it is believed to be totally improper.

The examiner’s answer also contains the statement that “the device of ‘202 including the foot can be moved towards a user holding a handle (moving leftwards) while holding the detent 11 stationary. Such an action will cause the detent to change a position from a position shown in Figure 5 to a position shown on Figure 6.”

This characterization also ignores the language of the claim, which is *said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action.* As is required by the above cited *Net MoneyIN* case, **an anticipatory reference must show all of the limitations of the claims**

arranged or combined in the same way. The '202 reference simply does not. The contrived analysis is certainly **other action** and does not otherwise meet the above italicized language of the claim.

Claim 42 is directed to a circular saw and is set forth below, with portions being italicized for emphasis.

42. (Previously presented) A circular saw comprising:
a housing;
a motor disposed within said housing and configured for rotating a circular saw blade rotatably driven by said motor;
a foot movably attached to said housing and having a generally flat bottom surface; and
an adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable relative to said foot through a range of positions, said adjustment detent mechanism including a detent holding assembly carrying a pivotable adjustment detent with a pivot axis on one end portion, a transverse ridge spaced from said pivot axis and a spring for biasing said detent into engagement with one of a plurality of spaced position recesses, and an arcuate member secured to said foot and defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said adjustment detent to provide predetermined position settings within said range of positions, *said detent being disengaged from one of said position recesses as a direct result of a user applying a releasing force to said foot which moves said foot without any other action.*

This claim recites that “said detent being disengaged from one of said position recesses as a direct result of a user applying a releasing force to said foot which moves said foot without any other action.” Clearly, the disengagement is produced as a result of the releasing force moving the foot without any other action. The arguments that have been made with regard to claim 32 are believed

to equally apply here and it is therefore believed that this claim is also not anticipated by either Clark or the '202 patent.

Claims 39-41 are patentable over the '202 reference in view of Lewin

Since the dependent claims necessarily include the features of the claims from which they depend, and in addition recite other features and/or functionality, it is believed that the pending dependent claims are in condition for allowance.

CONCLUSION

For the above reasons, Appellant requests the Board to reverse the outstanding rejections. The application should then be permitted to pass to allowance.

Respectfully submitted,

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CLAIMS APPENDIX

32. A circular saw comprising:

a housing;

a motor disposed within said housing and configured for rotating a circular saw blade rotatably driven by said motor;

a foot having a generally flat bottom surface; and

a saw blade adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable to said foot through a range of saw blade positions relative to said foot, said saw blade adjustment detent mechanism including a detent holding assembly carrying a pivotable saw blade adjustment detent with a pivot axis on one end portion, a transverse ridge spaced from said pivot axis and a spring for biasing said detent into engagement with one of a plurality of spaced position recesses, and an arcuate member defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said saw blade adjustment detent to provide predetermined position settings within said range of positions, said detent being disengaged from one of said position recesses when said foot is moved responsive to a user applying a releasing force to said foot without initiating any other action.

33. The circular saw of claim 32 wherein the saw blade adjustment detent mechanism is a bevel angle adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is

adjustable to said foot through a range of bevel angles relative to said foot.

The circular saw of claim 33 wherein said bevel angle adjustment detent mechanism comprises a bevel angle detent and an arcuate member defining a plurality of spaced bevel angle recesses each matingly engageable with said bevel angle detent to provide predetermined bevel angle settings within said range of bevel angles.

35. The circular saw of claim 33 wherein said detent holding assembly includes a mounting bracket engageable with a locking lever configured for locking said mounting bracket at a bevel angle upon a rotation of said housing relative to foot.

37. The circular saw of claim 32 wherein the saw blade adjustment detent mechanism is a depth adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable to said foot through a range of saw blade depths relative to said foot.

38. The circular saw of claim 37 wherein said depth adjustment detent mechanism comprises a depth adjustment detent and an arcuate member defining a plurality of spaced depth adjustment recesses each matingly engageable with said depth adjustment detent to provide predetermined depth adjustment settings within said range of depths.

39. The circular saw of claim 37 further comprising a bevel angle adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable to said foot through a range of bevel

angles relative to said foot.

40. The circular saw of claim 39 wherein said bevel angle adjustment detent mechanism includes a bevel angle detent holding assembly carrying a bevel angle detent and an arcuate member defining a plurality of spaced bevel angle recesses each matingly engageable with said bevel angle detent to provide predetermined bevel angle settings within said range of bevel angles.

41. The circular saw of claim 40 wherein said bevel angle detent holding assembly includes a mounting bracket engageable with a locking lever configured for locking said mounting bracket at a bevel angle upon a rotation of said housing relative to foot.

42. A circular saw comprising:
a housing;
a motor disposed within said housing and configured for rotating a circular saw blade rotatably driven by said motor;
a foot movably attached to said housing and having a generally flat bottom surface; and
an adjustment detent mechanism pivotally interconnecting said foot to said housing such that the circular saw blade is adjustable relative to said foot through a range of positions, said adjustment detent mechanism including a detent holding assembly carrying a pivotable adjustment detent with a pivot axis on one end portion, a transverse ridge spaced from said pivot axis and a spring for biasing said detent into engagement with one of a plurality of spaced position recesses, and an arcuate member secured to said foot and defining the plurality of spaced position recesses, each matingly and releasably engageable with said transverse ridge of said adjustment detent to provide predetermined position settings within said range

of positions, said detent being disengaged from one of said position recesses as a direct result of a user applying a releasing force to said foot which moves said foot without any other action.

EVIDENCE - APPENDIX

None.

RELATED PROCEEDINGS- APPENDIX

None.